

APR 17 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

GUSTAVO GONZALEZ-VELAZQUEZ;
et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72454

Agency Nos. A95-445-242
A95-445-243
A95-445-244

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2006**

Before: SILVERMAN, McKEOWN and PAEZ, Circuit Judges.

Gustavo Gonzalez Velazquez and his wife Angela Moreno Flores and their son Enrique Gonzalez-Moreno, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' dismissal of petitioners' appeal of an

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's denial of their applications for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We grant the petition and remand for further proceedings.

Petitioners contend that the IJ erred as a matter of law in concluding that they failed to satisfy the continuous physical presence requirement under 8 U.S.C. § 1229b(b)(1)(A). Petitioners testified that they were apprehended by immigration authorities and returned to Mexico in 1993. The IJ concluded that the apprehension and return constituted a break in petitioners' continuous physical presence such that they failed to meet the requisite ten-years before issuance of the Notice to Appear.

We recently held that the fact that an alien is turned around at the border, even where the alien is fingerprinted and information about his attempted entry is entered into the government's computer database, does not in and of itself interrupt the continuity of his physical presence in the United States. *See Tapia v. Gonzales*, 430 F.3d 997, 1002-1004 (9th Cir. 2005). However, we previously held that an administrative voluntary departure in lieu of removal proceedings does constitute a break in continuous physical presence. *See Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 972 (9th Cir. 2003) (per curiam).

On the record before us, we cannot determine whether petitioners' return to

Mexico by immigration officials was the result of a “turn-around,” as discussed in *Tapia*, or an administrative voluntary departure, as discussed in *Vasquez-Lopez*. Accordingly, we grant the petition and remand to the Board for further proceedings concerning the nature of petitioners’ contact with immigration officials in 1993.

All pending motions are denied as moot.

PETITION FOR REVIEW GRANTED; REMANDED.